THE HON'BLE SRI JUSTICE N.R.L. NAGESWARA RAO

C.C.C.A.No.23 OF 1992

JUDGMENT:-

The plaintiffs in O.S.No.1467 of 1981 on the file of the V Additional Judge, City Civil Court, Hyderabad, are the appellants herein.

2. The suit was filed for partition of the schedule properties.

3. According to the case of the plaintiffs, the 1st plaintiff is second wife, plaintiffs 2 to 4 are daughters and plaintiffs 5 and 6 are the sons of late Syed Jameeluddin. Defendant No.1 is 1st wife, defendants 2 and 3 are sons and defendant No.4 is daughter of late Jameeluddin through his 1st wife, who died intestate on 23.08.1980. He died possessed of plaint 'A' and 'B' schedule property. Plaintiffs 1 to 3 and 6 and defendants are prepared a list of movable and immovable properties left by the deceased as Matruka properties in November, 1980. Defendants have been in possession of the property and also income from it and the plaintiffs are entitled for partition and income. Therefore, the suit was filed for partition.

4. Defendants 1, 2 and 4 filed a written statement admitting the relationship. According to the defendants on 10.10.1975 the deceased father during his lifetime orally gifted item No.3 to defendant No.2 and delivered possession of the same and the gift was accepted. So also item No.4 was gifted to the 4th defendant and possession was taken. Item No.5 is absolute property of the 3rd defendant. Only items 1 and 2 are Matruka properties liable for partition. Plaintiffs have failed to include another house at Bazar Suleman Jaha, Mehndi Mehboob, Hyderabad. The deceased made oral Will in the presence of the

family members on 18.08.1980 confirming the gifts given by him on 02.11.1980 after the death of the deceased. A meeting was held between the members of the family and the plaintiffs were also present and the properties left behind by the deceased were written and the properties that were gifted to defendants 2 and 4 and the properties of defendant No.3 was excluded. Therefore, the defendants pleaded for a dismissal of the suit so far as those items are concerned.

5. On the basis of the above pleadings, necessary issues have been framed. After considering the evidence on record, the Court below has accepted the oral gift and excluded items 3 to 5 of the 'A' schedule property from partition and also excluded another house, which was claimed for partition by the defendants and decreed the suit partially so far as items 1 and 2 of the 'A' schedule and items 2 to 20 of the B-schedule. Aggrieved by the said judgment, the present appeal is filed.

6. The points that arise for consideration are:

1) Whether items 3 to 5 are also liable for partition?
2) Whether the judgment and decree passed by the Court below is legal and sustainable?

7. **POINTS**:

There is no dispute about the fact that items 3 to 5 were also the properties of late Jameeluddin. The question would be as to whether these properties were gifted on 10.10.1975 to defendants 2 and 4. As rightly contended by learned counsel for the appellants though there is no particular evidence about the nature of the gift on 10.10.1975, the fact remains that after the death of the deceased the family members had together and a list of properties contained in Ex.B.1 dated 02.11.1980 was reduced into writing. In fact, the evidence of PWs.1 and 2 clearly admits of such an understanding. That being so, if really the gift claimed by defendants 2 and 4 is not true and if the properties

are available for partition, there is no need to exclude the same. Evidently, item No.5 stands in the name of the 3rd defendant, who has got independent source of income for him and the Court below has rightly treated it as the property of the 3rd defendant and excluded it.

8. Defendants have also failed to prove that the left over item of one house belongs to the family of Jameeluddin and the said property was purchased by the 2nd plaintiff, who was examined as PW.2. Therefore, in view of the above circumstances, there is no material evidence to discredit Ex.B.1 and the admissions of PWs.1 and 2 and circumstances, which were rightly accepted by the Court below. I do not find any merits in the appeal.

9. Accordingly, the appeal is dismissed. No costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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JUSTICE N.R.L. NAGESWARA RAO

Date:21.12.2012
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